



**The Comptroller General  
of the United States**

Washington, D.C. 20548

*Ahearn*

## **Decision**

**Matter of:** Casde Corporation

**File:** B-235202

**Date:** August 14, 1989

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### **DIGEST**

General Accounting Office denies protest challenging propriety of proposed award to offeror whose proposal relied on a subcontractor suspended from federal government contracting after evaluation of best and final offers, but who was reinstated before award; agency was not precluded by regulation from further consideration of the offeror's proposal once the intended subcontractor was suspended, and award is proper where suspension is not in effect at time of award.

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### **DECISION**

Casde Corporation protests the propriety of a proposed contract award to ROH, Inc., under request for proposals (RFP) No. N00024-89-R-6006(Q), issued by the Department of the Navy for engineering and analytical technical support for the Navy's Gas Turbine Surface Combatant Program. The protester contends that the proposed award is improper because ROH's proposal relied on a subcontractor, Unisys Corporation, Shipboard and Ground Systems Group, that during the pendency of the procurement was suspended from federal government contracting. Unisys' suspension was later terminated and the agency now intends to proceed with award to ROH. We deny the protest.

On March 16, 1989, after discussions had been held and best and final offers (BAFOs) evaluated, the Navy suspended Unisys' Shipboard and Ground Systems Group, among other divisions of the firm, based upon evidence of widespread misconduct. On March 17, ROH notified the Navy of its intent to transfer the proposed Unisys effort to another subcontractor in the event the suspension was not lifted by the time of contract award.

In considering the effect of the Unisys suspension, the evaluation panel determined that the proposed Unisys effort,

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which amounted to only 2.59 percent of the overall proposed level of effort, made a de minimis contribution to ROH's BAFO, and that a change in subcontractors would not significantly impact ROH's technical score or the relative ranking of offerors. ROH received the highest technical score and offered the lowest projected cost of any firm in the competitive range; the agency reports that the difference in the technical scores of ROH and the next highest scored offeror was such that only a drastic change in ROH's technical score would have altered the ranking of offerors. Further, the panel concluded that reopening discussions concerning any replacement of Unisys as a subcontractor was unnecessary and not in the government's best interest, since a provision in the RFP requiring government approval for the substitution of key personnel would protect the agency's interest in procuring the same caliber of personnel as identified in the ROH proposal and, moreover, only 1 of the 26 individuals ROH proposed as key personnel was from Unisys. Based on these considerations, the evaluation panel, on March 22, recommended award to ROH, finding that its proposal represented the greatest value to the government. Subsequently, on June 23, Unisys' suspension was lifted.<sup>1/</sup> According to the agency, no award has yet been made.

Casde argues that under the procurement regulations prohibiting award to a suspended contractor, once Unisys was suspended, ROH's proposal, relying on an effort by a suspended subcontractor, properly could no longer be considered for award in the absence of a written determination of a compelling reason to make an exception. Casde maintains that the lifting of the suspension could not restore ROH's eligibility.

As pointed out by the protester, Federal Acquisition Regulation (FAR) § 9.405, in pertinent part, provides that "suspended contractors are excluded from receiving contracts" unless the agency determines in writing that there is a compelling reason for approval of such action; also, the Department of Defense FAR Supplement § 209.405 prohibits the evaluation of an offer received from a suspended "contractor," as well as its inclusion in the competitive range or the conduct of discussions with such an

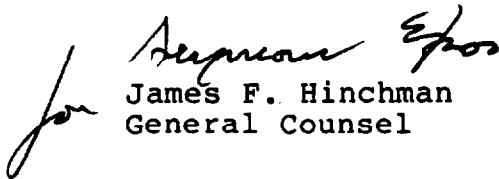
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<sup>1/</sup> Termination of the Unisys suspension was based on an agreement with the firm that it would undertake corrective action, including removal of individuals found to be responsible for misconduct and maintenance of an effective ethics program, and that it would reimburse the government for the costs associated with the agreement.

offeror, unless the agency determines in writing that there is a compelling reason to make an exception. However, these provisions are not applicable here. First, Unisys was not suspended during the specified stages of the procurement; since its suspension commenced after the evaluation of BAFOs and was lifted prior to the award of any contract, the cited regulations on their face do not apply. In this regard, we have previously indicated that where an offeror is suspended during the course of a negotiated procurement, but the suspension is subsequently lifted, the agency has the discretion to include the offeror in the procurement. See PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537.

More significantly, the cited provisions clearly apply only to suspensions of prime contractors. Although, as pointed out by the protester, the FAR definition of "contractor" in FAR, part 9, includes entities that may be expected to be awarded subcontracts, FAR § 9.405, § 9.405-2 establish specific rules for awards' of subcontracts to suspended firms (i.e., requiring government consent to any award of a subcontract to a suspended "contractor"). This suggests that these are the only provisions intended to establish rules applicable to the award of subcontracts. See generally 55 Comp. Gen. 1077 (1976).

The protest is denied.

  
James F. Hinchman  
General Counsel